In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 14017 of 2006

Date of Decision: 06.02.2007

Kamal Juneja and another

…Petitioners

Versus

Haryana Financial Corporation and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. D.K. Singal, Advocate,
for the petitioners.

Mr. Puneet Gupta, Advocate,

for the respondents.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for quashing recovery certificate dated 6.6.2006 alongwith consequential and allied proceedings initiated for recovery of a sum of Rs. 50,04,210/- as arrears of land revenue. It has further been

prayed that the respondents be restrained from undertaking any recovery proceedings against the petitioners.

Brief facts of the case are that on 24.1.1995, M/s Juneja Rubber Industries Private Limited, which was being run by Surjit Singh Juneja and his son Manjyoti Singh Juneja, had availed a loan of Rs. 39.50 lakhs as capital loan from the Haryana Financial Corporation-respondent No. 1 (for short 'HFC'). The second loan of Rs. 10 lakhs was also availed by the said concern on 16.10.1995. There was some default committed in the repayment schedule resulting into initiation of proceedings by the HFC to recover its dues from M/s Juneja Rubber Industries Private Limited, which included the process of auctioning its assets. On 4.8.2005, the Managing Director of the HFC has issued a recovery certificate (P-2) under Section 3 of the Haryana Public Moneys (Recovery of Dues) Act, 1979, against the principal debtor and other persons who alleged to have stood as sureties/guarantors. The name of the petitioners has also figured as guarantors in the loan deed executed by Surjit Singh Juneja with the HFC. It has been asserted that the petitioners neither stood as a guarantor or a surety nor they have signed any papers in that regard and that they were not involved remotely with the functioning of the above mentioned industrial concern. On 22.10.2005, the Assistant Collector-respondent No. 3 raised a demand against the petitioners which was revealed to them by the visit of bailiff at their residence. On 2.11.2005, the petitioners are stated to have received the recovery certificate issued by the Managing Director of the HFC. On 11.11.2005, the petitioners made

representation to the Managing Director of the HFC apprising him that although they were closely related to Surjit Singh Juneja but their relations were strained with him due to family disputes since 1990 and there was no occasion for them to stood as surety for the said industrial concern in the year 1995. The petitioners accordingly requested the Managing Director to stay the recovery proceedings after affording them an opportunity of hearing. On 29.11.2005, the petitioners were allowed joint inspection of the master file at Bahadurgarh Branch of the HFC. On the basis of various points raised by the petitioners at the time of joint inspection with the Corporation officials on 29.11.2005 (as detailed in para 7 of the writ petition), the Managing Director of the HFC on 30.11.2005 had sent instructions to withdraw recovery certificate that was issued against the petitioner, which in turn was intimated to the Assistant Collector, Delhi. On 19.12.2005, an additional representation is stated to have been sent by the petitioners to the Managing Director in which prayer was made for verification of their signatures and further investigation during the pendency of re-determination of dues. On 12.5.2006, the petitioners received determination notices. On 17.5.2006, the petitioners were heard and the Managing Director of the HFC issued instructions for initiation of recovery proceedings against the petitioners for an amount of Rs. 50,04,210/-. On 23.5.2006, the petitioners again represented for review of decision to issue recovery certificate. Eventually, the recovery certificate was issued on 6.6.2006 and a copy thereof was sent to the Assistant Collector,

Delhi. The Collector served a notice of demand on petitioner No. 2 on 26.8.2006, which led to the filing of the petition.

When the writ petition came up for consideration, a Division Bench of this Court on 29.9.2006, required the petitioners to deposit a sum of Rs. 15,00,000/- within two weeks from that date and passed the following order:-

> " It is contention of counsel for the petitioners that the petitioners are going to be held liable on the ground that they had signed as sureties for the loan amount, raised by their relations. He further states that through out it had been averment of the petitioners that no such documents were ever signed by them. Despite that, no attempt was made by the authorities to get their signatures attested/verified from an Expert. Counsel further states that to show their bonafides, without accepting any liability, the petitioners shall deposit an amount of Rs. 15,00,000/- within two weeks from today, with the Registry of this Court. On request, adjourned to October 17, 2006. In the meantime, it is ordered that the coercive methods, to recover the amount, be not used by respondent No. 3, against the petitioners.
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> Copy of the order be given Dasti to the parties."

The amount of Rs. 15,00,000/- was deposited on 12.10.2006 with the Registrar of this Court as has been reported by

the office. Thereafter the Division Bench on 17.10.2006 had passed the following order:-

> " Consequent to the order, passed by this Court on September 29, 2006, petitioners have deposited an amount of Rs. 15,00,000/- with the Registrar of this Court. Registrar (Judicial) is directed to put that amount in fixed deposit with the Bank, fetching highest amount of interest. Needful be done within two weeks from today. In view of deposit so made, we deem it appropriate to ask the respondent-Corporation to get signatures of the petitioners compared with their signatures on the documents, allegedly executed by them, when loan was raised. The petitioners are directed to appear before the Managing Director, Haryana Financial Corporation, Sector 17, Chandigarh, on November 3, 2006, who shall make an arrangement, to sent the document in question, to the Forensic Science Laboratory at Madhuban (Karnal). Then the petitioners shall also appear before the Expert, on the date given by the concerned officer of Forensic Science Laboratory, to the Managing Director, Haryana Financial Corporation. Adjourned to December 1, 2006. The Director, F.S.L., is directed to get specimen signatures of the petitioners compared, with their alleged signatures on the documents in question. If any expenses are incurred in

that process, the petitioners shall bear the same. Report be submitted before the next date of hearing."

In pursuance to the aforementioned order, the report from the Forensic Science Laboratory, Haryana, Madhuban, Karnal, bearing Report (Opinion) FSL (H) No. 06/Docs-6823, dated 28.11.2006, was received on 1.12.2006 and copies of the report were permitted to be given to the learned counsel for the parties. A perusal of the report shows that the signatures on the collateral security do not tally with the sample and admitted signatures of the petitioners.

We have heard learned counsel for the parties and perused the record. During the course of arguments Mr. Puneet Gupta, learned counsel for the respondents has raised the objection that in the instant petition disputed questions of facts have been raised which cannot be settled in these proceedings notwithstanding that the Hand Writing Expert Report prepared by the Forensic Science Laboratory, Haryana, Madhuban, Karnal, is in favour of the petitioners. According to the learned counsel, the proper remedy for determination of various issues is that the petitioners may file a civil suit and establish the facts in accordance with law.

Mr. D.K. Singal, learned counsel for the petitioners states that an amount of Rs. 15,00,000/- was deposited by the petitioners in pursuance to the order dated 29.9.2006 with the Registrar of this Court in order to prove their bonafide. According to the learned counsel the bonafide of the petitioners stands proved as the report of the Forensic Science Laboratory, Haryana, Madhuban, Karnal, dated 28.11.2006, has categorically concluded that the

signatures on the surety bond allegedly executed by the petitioners do not match with the specimen/admitted signatures.

Keeping in view the aforementioned situation, we deem it just and appropriate to relegate the petitioners to the remedy of filing a civil suit for the relief which has been claimed in the instant petition. In case such a suit is filed, the Civil Court shall make all the efforts to dispose of the same expeditiously preferably within a period of one year from the date of its filing. The Registrar is directed to refund the amount of Rs. 15,00,000/-, which the petitioners have deposited in pursuance to the order dated 29.9.2006, along with interest upto date to the petitioners forthwith. We further direct that the recovery proceedings against the petitioners shall not be carried any further till the suit is decided. If the petitioners do not file any suit within a period of one month from the date of receipt of certified copy of this order then the injunction granted by us shall not operate and the HFC shall be at liberty to proceed against the petitioners in accordance with law.

The petition is disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

February 6, 2007
Pkapoor